

**BOARD OF EQUALIZATION****BUSINESS TAXES COMMITTEE MEETING MINUTES**

HONORABLE BETTY T. YEE, COMMITTEE CHAIR

450 N STREET, SACRAMENTO

MEETING DATE: AUGUST 23, 2011, TIME: 10:00 A.M.

ACTION ITEMS & STATUS REPORT ITEMS**Agenda Item No: 1****Title: Amendments to the Cigarette and Tobacco Products Licensing Act Regulations****Issue/Topic:**

Whether the Board should initiate an interested parties process to promulgate the proposed adoption of a new regulation and amendments to existing regulations under the Cigarette and Tobacco Products Licensing Act of 2003.

Committee Discussion:

Staff presented the issue explaining the need to initiate discussions with interested parties regarding amendments to the provisions of the Cigarette and Tobacco Products Licensing Act through promulgation of a new regulation, *Transfers of Cigarette and Tobacco Products between Retail Stores Owned by the Same Person*, and the amendment of existing regulations 4601, 4603, 4604 and 4605. A speaker representing the California Distributors Association addressed the Board, expressing concerns that the intent of AB 71 (Horton) does not authorize the transferring of tobacco products from location to location.

Ms. Yee stated this matter should move forward to the interested parties (IP) process to provide clarity and determine if the Board has statutory authority to allow such transfers or whether the Board may need to seek statutory authorization. Senator Runner was supportive of the IP process to resolve the ambiguities and provide clarity regarding the transfer of tobacco products between locations. Ms. Steel was also supportive and requested that staff pursue outreach efforts to provide notification to smaller family owned business. Mr. Horton raised concerns with the blending of tax paid and ex-tax tobacco product inventory, the accounting challenges it will present and the potential for criminal acts. Ms. Mandel requested staff look into the original basis for the existing suspension periods covered by regulations 4603, 4604 and 4605.

In closing, Ms. Yee reaffirmed her request for providing clarity on this matter through the IP process and for staff to address the varied statutory provisions involving sales of cigarette and tobacco products through a consolidated publication.

Committee Action:

Upon motion by Mr. Horton, seconded by Ms. Steel, the Committee unanimously referred the matter to the interested parties process.

Agenda Item No: 2**Title: Technology Transfer Agreements – Regulation 1507****Issue:**

Approval sought to conduct a study that would evaluate the feasibility of developing an optional percentage to reasonably estimate the fair market value of tangible personal property in technology transfer agreements involving prewritten software transferred on tangible storage media pursuant to subdivision (c)(10)(C) of sections 6011 and 6012 of the Revenue and Taxation Code.

Committee Discussion:

Mr. Horton expressed his desire that staff expand outreach to include software industry executives to determine whether a safe harbor provision should be included in the regulation. Ms. Yee agreed that staff would consult with industry on the study.

Committee Action:

Upon motion by Mr. Horton, seconded by Ms. Mandel, the Committee unanimously authorized staff to conduct a study to evaluate the feasibility.

Agenda Item No: 3**Title: Proposed amendments to Regulation 1807, *Petitions for Reallocation of Local Tax*, and 1828, *Petitions for Distribution or Redistribution of Transactions and Use Tax Filing and Processing Local Tax Petitions* – Regulation 1807****Issue:**

Request approval and authorization to publish proposed revisions Regulations 1807 and 1828 to improve the local and district tax appeals process.

Committee Discussion:

Staff presented proposed amendments to Regulations 1807 and 1828. Interested parties addressed the Board expressing their support of the staff recommendation and their interest in continuing to discuss and work with staff on the non-regulatory issues included in the staff expectations report included in the informal issue paper. Ms. Yee directed staff to address these issues through the interested parties process to incorporate the procedures into Board manuals and bring the proposed manual revisions to the BTC for discussion and approval.

Committee Action:

Upon motion by Mr. Horton, seconded by Ms. Mandel, the Committee unanimously approved and authorized for publication Alternative 1 – Staff Recommendation. There is no operative date, and implementation will take place 30 days after approval by the Office of Administrative Law. Copies of proposed Regulation 1807 and Regulation 1828 are attached.

/s/ Betty T. Yee

Honorable Betty T. Yee, Committee Chair

/s/ Kristine Cazadd

Kristine Cazadd, Interim Executive Director

BOARD APPROVED

at the August 23, 2011 Board Meeting

/s/ Diane Olson

Diane Olson, Chief
Board Proceedings Division

Regulation 1807. PETITIONS FOR REALLOCATION OF LOCAL TAX.**(a) DEFINITIONS.**

(1) **LOCAL TAX.** “Local tax” means a local sales and use tax adopted pursuant to Revenue and Taxation Code section 7200, et seq., and administered by the Board.

(2) **JURISDICTION.** “Jurisdiction” means any city, county, city and county, or redevelopment agency which has adopted a local tax.

(3) **PETITION.** “Petition” means a request or inquiry from a jurisdiction, other than a submission under Revenue and Taxation Code section 6066.3, for investigation of suspected misallocation of local tax submitted in writing to the Allocation Group of the Sales and Use Tax Department. The petition must contain sufficient factual data to support the probability that local tax has been erroneously allocated and distributed. Sufficient factual data should include, for each business location being questioned:

(A) Taxpayer name, including owner name and fictitious business name or dba (doing business as) designation.

(B) Taxpayer’s permit number or a notation stating “No Permit Number.”

(C) Complete business address of the taxpayer.

(D) Complete description of taxpayer’s business activity or activities.

(E) Specific reasons and evidence why the taxpayer’s allocation is questioned. If the petition alleges that a misallocation occurred because a sale location is unregistered, evidence that the questioned location is a selling location or that it is a place of business as defined by California Code of Regulations, title 18, section 1802. If the petition alleges that a misallocation occurred because the tax for a sale shipped from an out-of-state location was actually sales tax and not use tax, evidence that there was participation in the sale by an in-state office of the retailer and that title to the goods passed to the purchaser inside California.

(F) Name, title, and telephone number of the contact person.

(G) The tax reporting periods involved.

“Petition” also includes an appeal by a jurisdiction from a notification from the Local Revenue Allocation Unit of the Sales and Use Tax Department that local taxes previously allocated to it were misallocated and will be reallocated. Such a jurisdiction may object to that notification by submitting a written petition to the Allocation Group within 30 days of the date of mailing of the notification or within a period of extension described below. The petition must include a copy of the notification and specify the reason the jurisdiction disputes it. If a jurisdiction does not submit such a petition within 30 days of the date of mailing of the notification, or within a period of extension, the notification of the Local Revenue Allocation Unit is final as to the jurisdiction so notified.

The jurisdiction may request a 30-day extension to submit a written objection to a notification of misallocation from the Local Revenue Allocation Unit. Such request must provide a reasonable explanation for the requesting jurisdiction’s inability to submit its objection within 30 days and must be received by the Local Revenue Allocation Unit within 30 days of the date of mailing of its notification. Within five days of receipt of the request, the Local Revenue Allocation Unit will mail notification to the jurisdiction whether the request is granted or denied. If a timely request for an extension is submitted, the time for the jurisdiction to file a written objection is extended to 10 days after the mailing of the notice of whether the request is granted or denied. If the request is granted, the time for the jurisdiction to submit a written objection to the notification of the Local Revenue Allocation Unit is further extended to the 60th day after the date of mailing of the notification of misallocation.

(4) **PETITIONER.** “Petitioner” is a jurisdiction that has filed a valid petition pursuant to subdivision (a)(3).

(5) **DATE OF KNOWLEDGE.** Unless an earlier date is operationally documented by the Board, “date of knowledge” is the date on which the Allocation Group receives a valid petition. Where a misallocation that is reasonably covered by the petition is confirmed based on additional facts or evidence supplied by the petitioner or otherwise learned as a direct result of investigating the petition, the date of knowledge is the date on which the Allocation Group received the petition.

The proposed amendments contained in this document may not be adopted. Any revisions that are adopted may differ from this text.

(6) SUBSTANTIALLY AFFECTED JURISDICTION. "Substantially affected jurisdiction" is a jurisdiction for which the decision on a petition would result in a decrease to its total allocation of 5 percent or more of its average quarterly allocation (generally determined with reference to the prior four calendar quarters) or of \$50,000 or more, and includes a jurisdiction whose allocation will be decreased solely as the result of a reallocation from the statewide and applicable countywide pools.

(7) NOTIFIED JURISDICTION. "Notified jurisdiction" is a jurisdiction that has been notified as a substantially affected jurisdiction.

(b) REVIEW BY ALLOCATION GROUP.

(1) The Allocation Group will promptly acknowledge a submission intended as a petition. If the submission does not contain the elements identified in subdivision (a)(3), the original submission will be returned to the submitting jurisdiction. The jurisdiction will have 30 days from the date of the correspondence from the Allocation Group requesting the missing information to make a supplemental submission. If the supplemental submission contains the necessary elements identified in subdivision (a)(3), then the date of receipt of the original submission will be regarded as the date of knowledge. In the event that a submission is not perfected within this 30 day period, it will not qualify as a valid petition.

(2) The Allocation Group will review the petition and issue to the petitioner a written decision to grant or deny the petition, including the basis for that decision. The written decision will also note the date of knowledge, and if other than the date the petition was received, will include the basis for that date. A reallocation will be made if the preponderance of evidence, whether provided by petitioner or obtained by Board staff as part of its investigation of the petition, shows that there was a misallocation. If the preponderance of evidence does not show that a misallocation occurred, the petition will be denied.

(3) If the Allocation Group does not issue a decision within six months of the date it receives a valid petition, the petitioner may request that the Allocation Group issue its decision without regard to the status of its investigation. Within 90 days of receiving such a request, the Allocation Group will issue its decision based on the information in its possession.

(4) If the decision of the Allocation Group is that the asserted misallocation did not occur and that the petition should be denied, in whole or in part, the petitioner may submit to the Allocation Group a written objection to the decision under subdivision (b)(6).

(5) If the decision of the Allocation Group is that a misallocation did occur, it will also mail a copy of its decision to any substantially affected jurisdiction. Any such notified jurisdiction may submit to the Allocation Group a written objection to the decision under subdivision (b)(6).

(6) The petitioner or any notified jurisdiction may appeal the decision of the Allocation Group by submitting a written objection to the Allocation Group within 30 days of the date of mailing of the Allocation Group's decision, or within a period of extension authorized by subdivision (b)(910). If no such timely objection is submitted, the decision of the Allocation Group is final as to the petitioner and all notified jurisdictions.

(7) If the petitioner or a notified jurisdiction submits a timely written objection to the decision of the Allocation Group, the Allocation Group will consider the objection and issue a written supplemental decision to grant or deny the objection, including the basis for that decision. A copy of the supplemental decision will be mailed to the petitioner, to any notified jurisdiction, and to any other jurisdiction that is substantially affected by the supplemental decision.

(8) If the Allocation Group does not issue a supplemental decision within three months of the date it receives a written timely objection to the decision of the Allocation Group, the petitioner or any notified jurisdiction may request that the Allocation Group issue its supplemental decision without regard to the status of its investigation. Within 60 days of receiving such a request, the Allocation Group will issue its supplemental decision based on the information in its possession.

(89) The petitioner or any notified jurisdiction may appeal the supplemental decision of the Allocation Group by submitting a written objection under subdivision (c)(1) within 30 days of the date of mailing of that supplemental decision, or within a period of extension authorized by subdivision (b)(910). If no such timely objection is submitted, the supplemental decision of the Allocation Group is final as to the petitioner and all notified jurisdictions.

(910) The petitioner or any notified jurisdiction may request a 30-day extension to submit a written objection under subdivision (b)(6) or under subdivision (b)(89), as applicable. Such request must provide a reasonable explanation for the requesting jurisdiction's inability to submit its objection within 30 days, must be copied to all other jurisdictions

The proposed amendments contained in this document may not be adopted. Any revisions that are adopted may differ from this text.

to whom the Allocation Group mailed a copy of its decision or supplemental decision (to the extent known by the requesting jurisdiction), and must be *received* by the Allocation Group within 30 days of the date of mailing of its decision or supplemental decision. Within five days of receipt of the request, the Allocation Group will mail notification to the petitioner and to all notified jurisdictions whether the request is granted or denied. If a timely request for an extension is submitted, the time for the petitioner and any notified jurisdiction to file a written objection to the decision or supplemental decision of the Allocation Group is extended to 10 days after the mailing of the notice of whether the request is granted or denied. If the request is granted, the time for the petitioner and all notified jurisdictions to submit a written objection to the decision or supplemental decision of the Allocation Group is further extended to the 60th day after the date of mailing of the decision or supplemental decision.

(c) REVIEW BY APPEALS DIVISION.

(1) The petitioner or any notified jurisdiction may appeal the supplemental decision of the Allocation Group by submitting a written objection to the Allocation Group within 30 days of the date of mailing of the Allocation Group's supplemental decision, or within a period of extension authorized by subdivision (b)(910). Such an objection must state the basis for the objecting jurisdiction's disagreement with the supplemental decision and include all additional information in its possession that supports its position.

(2) If a timely objection to its supplemental decision is submitted, the Allocation Group will, within 30 days of receipt of the objection, prepare the file and forward it to the Appeals Division. The petitioner, all notified jurisdictions, any other jurisdiction that would be substantially affected if the petition were granted, and the Sales and Use Tax Department will thereafter be mailed notice of the appeals conference, which will generally be sent at least 45 days prior to the scheduled date of the conference.

(A) Petitioner or any notified jurisdiction may continue to discuss the dispute with staff of the Sales and Use Tax Department after the dispute is referred to the Appeals Division. If, as a result of such discussions or otherwise, the Sales and Use Tax Department decides the supplemental decision of the Allocation Group was incorrect or that further investigation should be pursued, it shall so notify the Appeals Division, the petitioner, and all notified jurisdictions.

(B) If the Department sends notice to the Appeals Division in accordance with the subdivision (c)(2)(A) no later than 30 days prior to the date scheduled for the appeals conference, the Appeals Division will suspend its review and the dispute will be returned to the Department. The Department will thereafter issue a second supplemental decision, or will return the dispute to the Appeals Division along with a report of its further investigation, if appropriate, for the review and decision of the Appeals Division.

(C) If the Department sends notice to the Appeals Division in accordance with subdivision (c)(2)(A) less than 30 days prior to the date scheduled for the appeals conference, the Appeals Division will decide whether the dispute should be returned to the Department or remain with the Appeals Division, and notify the parties accordingly. If the dispute is returned to the Department, the Department will thereafter issue a second supplemental decision, or will return the dispute to the Appeals Division along with a report of its further investigation, if appropriate, for the review and decision of the Appeals Division.

(D) Where the Department issues a second supplemental decision in accordance with subdivision (c)(2)(B) or (c)(2)(C), it will send a copy of the decision to the petitioner, any notified jurisdiction, and any other jurisdiction that is substantially affected by the second supplemental decision, any of whom may appeal the second supplemental decision by submitting a written objection under subdivision (c)(1) within 30 days of the date of mailing of that supplemental decision, or within a period of extension authorized by subdivision (b)(910). If no such timely objection is submitted, the second supplemental decision is final as to the petitioner and all notified jurisdictions.

(3) The appeals conference is not an adversarial proceeding, but rather is an informal discussion where the petitioner, any notified jurisdictions who wish to participate, and the Sales and Use Tax Department have the opportunity to explain their respective positions regarding the relevant facts and law to the Appeals Division conference holder. To make the conference most productive, each participant should submit all facts, law, argument, and other information in support of its position to the Appeals Division conference holder, and to the other participants, at least 15 days before the date of the appeals conference; however, relevant facts and arguments will be accepted at any time at or before the appeals conference. If, during the appeals conference, a participant requests permission to submit additional written arguments and documentary evidence, the conference holder may grant that participant 45-30 days after the appeals conference, ~~or 30 days with sufficient justification~~, to submit to the conference holder, with copies to all other participants, such additional arguments and evidence. Any other participant at the conference who is in opposition to the requesting participant on the issue(s) covered by the additional submission is allowed 45-30 days to submit to the conference holder, with copies to all other participants,

The proposed amendments contained in this document may not be adopted. Any revisions that are adopted may differ from this text.

arguments and evidence in response. No request by a participant for further time to submit additional arguments or evidence will be granted without the approval of the Assistant Chief Counsel of the Appeals Division or his or her designee. The Appeals Division on its own initiative may also request, at or after the appeals conference, further submissions from any participant.

(4) Within 90 days after the final submission authorized by subdivision (c)(3), the Appeals Division will issue a written Decision and Recommendation (D&R) setting forth the applicable facts and law and the conclusions of the Appeals Division. The Chief Counsel may allow up to 90 additional days to prepare the D&R upon request of the Appeals Division. Both the request and the Chief Counsel's response granting or denying the request for additional time must be in writing and copies provided to the petitioner, all notified jurisdictions, and the Sales and Use Tax Department. A copy of the D&R will be mailed to the petitioner, to all notified jurisdictions, to any other jurisdiction that will be substantially affected by the D&R, and to the Sales and Use Tax Department.

(5) The petitioner or any notified jurisdiction may appeal the D&R by submitting a written request for Board hearing under subdivision (d)(1) within 60 days of the date of mailing of the D&R.

(6) The petitioner, any notified jurisdiction, or the Sales and Use Tax Department may also appeal the D&R, or any Supplemental D&R (SD&R), by submitting a written request for reconsideration (RFR) to the Appeals Division before expiration of the time during which a timely request for Board hearing may be submitted, or if a Board hearing has been requested, prior to that hearing. If a jurisdiction or the Sales and Use Tax Department submits an RFR before the time for requesting a Board hearing has expired, the Appeals Division will issue an SD&R to consider the request, after obtaining whatever additional information or arguments from the parties that it deems appropriate. If an RFR is submitted after a jurisdiction has requested a Board hearing, the Appeals Division will determine whether it should issue an SD&R in response. A copy of the SD&R issued under this subdivision or under subdivision (c)(7) will be mailed to the petitioner, to all notified jurisdictions, to any other jurisdiction that will be substantially affected by the SD&R, and to the Sales and Use Tax Department. The petitioner or any notified jurisdiction may appeal the SD&R by submitting a written request for Board hearing under subdivision (d)(1) within 60 days of the date of mailing of the SD&R.

(7) Whether or not an RFR is submitted, at any time prior to the time the recommendation in the D&R or prior SD&R is acted on by the Department as a final matter or the Board has held an oral hearing on the petition, the Appeals Division may issue an SD&R as it deems necessary to augment, clarify, or correct the information, analysis, or conclusions contained in the D&R or any prior SD&R.

(8) If no RFR is submitted under subdivision (c)(6) or request for Board hearing under subdivision (d)(1) within 60 days of the date of mailing of the D&R or any SD&R, the D&R or SD&R as applicable is final as to the petitioner and all notified jurisdictions unless the Appeals Division issues an SD&R under subdivision (c)(7).

(d) REVIEW BY BOARD.

(1) The petitioner or any notified jurisdiction may submit a written request for Board hearing if it does so to the Board Proceedings Division within 60 days of the date of mailing of the D&R or any SD&R. Such a request must state the basis for the jurisdiction's disagreement with the D&R or SD&R as applicable and include all additional information in its possession that supports its position.

(2) If the Board Proceedings Division receives a timely request for hearing under subdivision (d)(1), it will notify the Sales and Use Tax Department, the petitioner, any notified jurisdiction, any other jurisdiction that would be substantially affected if the petition were granted, and the taxpayer(s) whose allocations are the subject of the petition, that the petition for reallocation of local tax is being scheduled for a Board hearing to determine the proper allocation.

(3) The Sales and Use Tax Department, the petitioner, and all jurisdictions notified of the Board hearing pursuant to subdivision (d)(2) are parties and may participate in the Board hearing. The taxpayer is not a party to the Board hearing unless it chooses to actively participate in the hearing process by either filing a brief or making a presentation at the hearing.

(4) Briefs may be submitted for the Board hearing in accordance with California Code of Regulations, title 18, sections 5270 and 5271.

(5) To the extent not inconsistent with this regulation, the hearing will be conducted in accordance with Chapter 5 of the Board of Equalization Rules for Tax Appeals (Cal. Code Regs., tit. 18, § 5510, et seq.). The Board will apply the preponderance of evidence rules set forth in subdivision (b)(2) in reaching its decision and not the burden of proof

The proposed amendments contained in this document may not be adopted. Any revisions that are adopted may differ from this text.

rules set forth in California Code of Regulations, title 18, section 5541. The Board's final decision on a petition for reallocation exhausts all administrative remedies on the matter for all jurisdictions.

(e) LIMITATION PERIOD FOR REDISTRIBUTIONS. Redistributions shall not include amounts originally distributed earlier than two quarterly periods prior to the quarter of the date of knowledge.

(f) APPLICATION TO SECTION 6066.3 INQUIRIES. The procedures set forth herein for submitting a petition for reallocation of local tax are separate from those applicable to a submission under Revenue and Taxation Code section 6066.3. If a petition under the procedures set forth herein and a submission under section 6066.3 are both filed for the same alleged improper distribution, only the earliest submission will be processed, with the date of knowledge established under the procedures applicable to that earliest submission. However, the procedures set forth in subdivisions (b), (c), and (d) also apply to appeals from reallocation determinations made under section 6066.3.

(g) OPERATIVE DATE AND TRANSITION RULES.

This regulation is intended to reduce the time required to decide the validity of reallocation petitions and otherwise improve the process for doing so. Regulation 1807 was repealed and readopted in 2008. It is The readopted regulation is intended to have a neutral impact only on the current dispute over the continuing validity of certain petitions that are were governed by prior Regulation 1807 (effective February 22, 2003).

(1) The operative date of this regulation as readopted in 2008 and any amendments thereto is the effective date it becomes effective under Section 11343.4 of the Government Code (thirty days after it has been approved approval by the Office of Administrative Law and forwarded forwarding to the Secretary of State) and it there shall have be no retroactive effect.

(2) Petitions filed prior to the operative date of this regulation, Notwithstanding subdivision (g)(3), petitions shall be reviewed, appealed and decided in accordance with this regulation as to procedures occurring after that its operative date or that of any amendments thereto.

(3) All ~~such~~ petitions filed prior to January 1, 2003 and denied by Board Management must have perfected any access they may have had to a Board Member hearing no later than 60 days after the September 10, 2008, operative date of this regulation.

The proposed amendments contained in this document may not be adopted. Any revisions that are adopted may differ from this text.

Regulation 1828. PETITIONS FOR DISTRIBUTION OR REDISTRIBUTION OF TRANSACTIONS AND USE TAX.

(a) DEFINITIONS.

(1) **DISTRICT TAX.** "District tax" means a transaction and use tax adopted pursuant to Revenue and Taxation Code section 7251, et seq., or pursuant to Revenue and Taxation Code section 7285, et seq., and administered by the Board.

(2) **DISTRICT.** "District" means any entity, including a city, county, city and county, or special taxing jurisdiction, which has adopted a district tax.

(3) **PETITION.** "Petition" means a request or inquiry from a district for investigation of suspected improper distribution or nondistribution of district tax submitted in writing to the Allocation Group of the Sales and Use Tax Department. The petition must contain sufficient factual data to support the probability that district tax has not been distributed or has been erroneously distributed. Sufficient factual data should include, for each business location being questioned:

(A) Taxpayer name, including owner name and fictitious business name or dba (doing business as) designation.

(B) Taxpayer's permit number or a notation stating "No Permit Number."

(C) Complete business address of the taxpayer.

(D) Complete description of taxpayer's business activity or activities.

(E) Specific reasons and evidence why the distribution or nondistribution is questioned, identifying the delivery location or locations of the property the sales of which are at issue. If the petition alleges that the subject transactions are subject to the district's use tax, evidence that the retailer is engaged in business in the district as provided in California Code of Regulations, title 18, section 1827, subdivision (c).

(F) Name, title, and telephone number of the contact person.

(G) The tax reporting periods involved.

"Petition" also includes an appeal by a district from a notification from the Local Revenue Allocation Unit of the Sales and Use Tax Department that district taxes previously allocated to it were misallocated and will be reallocated. Such a district may object to that notification by submitting a written petition to the Allocation Group within 30 days of the date of mailing of the notification or within a period of extension described below. The petition must include a copy of the notification and specify the reason the district disputes it. If a district does not submit such a petition within 30 days of the date of mailing of the notification, or within a period of extension, the notification of the Local Revenue Allocation Unit is final as to the district so notified.

The district may request a 30-day extension to submit a written objection to a notification of misallocation from the Local Revenue Allocation Unit. Such a request must provide a reasonable explanation for the requesting district's inability to submit its objection within 30 days and must be received by the Local Revenue Allocation Unit within 30 days of the date of mailing of its notification. Within five days of receipt of the request, the Local Revenue Allocation Unit will mail notification to the district whether the request is granted or denied. If a timely request for extension is submitted, the time for the district to file a written objection is extended to 10 days after the mailing of the notice of whether the request is granted or denied. If the request is granted, the time for the district to submit a written objection to the notification of the Local Revenue Allocation Unit is further extended to the 60th day after the date of mailing of the notification of misallocation.

(4) **PETITIONER.** "Petitioner" is a district that has filed a valid petition pursuant to subdivision (a)(3).

(5) **DATE OF KNOWLEDGE.** Unless an earlier date is operationally documented by the Board, "date of knowledge" is the date on which the Allocation Group receives a valid petition. Where an error in distribution that is reasonably covered by the petition is confirmed based on additional facts or evidence supplied by the petitioner or otherwise learned as a direct result of investigating the petition, the date of knowledge is the date on which the Allocation Group received the petition.

The proposed amendments contained in this document may not be adopted. Any revisions that are adopted may differ from this text.

(6) SUBSTANTIALLY AFFECTED DISTRICT. “Substantially affected district” is a district for which the decision on a petition would result in a decrease to its total distribution of 5 percent or more of its average quarterly distribution (generally determined with reference to the prior four calendar quarters) or of \$50,000 or more.

(7) NOTIFIED DISTRICT. “Notified district” is a district that has been notified as a substantially affected district.

(b) REVIEW BY ALLOCATION GROUP.

(1) The Allocation Group will promptly acknowledge a submission intended as a petition. If the submission does not contain the elements identified in subdivision (a)(3), the original submission will be returned to the submitting jurisdiction. The jurisdiction will have 30 days from the date of the correspondence from the Allocation Group requesting the missing information to make a supplemental submission. If the supplemental submission contains the necessary elements identified in subdivision (a)(3), then the date of receipt of the original submission will be regarded as the date of knowledge. In the event that a submission is not perfected within this 30 day period, it will not qualify as a valid petition.

(2) The Allocation Group will review the petition and issue to the petitioner a written decision to grant or deny the petition, including the basis for that decision. The written decision will also note the date of knowledge, and if other than the date the petition was received, will include the basis for that date. A redistribution will be made if the preponderance of evidence, whether provided by petitioner or obtained by Board staff as part of its investigation of the petition, shows that there was an error in distribution. If the preponderance of evidence does not show that an error in distribution occurred, the petition will be denied.

(3) If the Allocation Group does not issue a decision within six months of the date it receives a valid petition, the petitioner may request that the Allocation Group issue its decision without regard to the status of its investigation. Within 90 days of receiving such a request, the Allocation Group will issue its decision based on the information in its possession.

(4) If the decision of the Allocation Group is that the asserted error in distribution did not occur and that the petition should be denied, in whole or in part, the petitioner may submit to the Allocation Group a written objection to the decision under subdivision (b)(6).

(5) If the decision of the Allocation Group is that an error in distribution did occur, it will also mail a copy of its decision to any substantially affected district. Any such notified district may submit to the Allocation Group a written objection to the decision under subdivision (b)(6).

(6) The petitioner or any notified district may appeal the decision of the Allocation Group by submitting a written objection to the Allocation Group within 30 days of the date of mailing of the Allocation Group’s decision, or within a period of extension authorized by subdivision (b)(910). If no such timely objection is submitted, the decision of the Allocation Group is final as to the petitioner and all notified districts.

(7) If the petitioner or a notified district submits a timely written objection to the decision of the Allocation Group, the Allocation Group will consider the objection and issue a written supplemental decision to grant or deny the objection, including the basis for that decision. A copy of the supplemental decision will be mailed to the petitioner, to any notified district, and to any other district that is substantially affected by the supplemental decision.

(8) If the Allocation Group does not issue a supplemental decision within three months of the date it receives a written timely objection to the decision of the Allocation Group, the petitioner or any notified district may request that the Allocation Group issue its supplemental decision without regard to the status of its investigation. Within 60 days of receiving such a request, the Allocation Group will issue its supplemental decision based on the information in its possession.

~~(89)~~ The petitioner or any notified district may appeal the supplemental decision of the Allocation Group by submitting a written objection under subdivision (c)(1) within 30 days of the date of mailing of that supplemental decision, or within a period of extension authorized by subdivision (b)(910). If no such timely objection is submitted, the supplemental decision of the Allocation Group is final as to the petitioner and all notified districts.

~~(910)~~ The petitioner or any notified district may request a 30-day extension to submit a written objection under subdivision (b)(6) or under subdivision (b)(89), as applicable. Such request must provide a reasonable explanation for the requesting district’s inability to submit its objection within 30 days, must be copied to all other districts to whom the Allocation Group mailed a copy of its decision or supplemental decision (to the extent known by the requesting district), and must be *received* by the Allocation Group within 30 days of the date of mailing of its decision or supplemental decision. Within five days of receipt of the request, the Allocation Group will mail notification to the

The proposed amendments contained in this document may not be adopted. Any revisions that are adopted may differ from this text.

petitioner and to all notified districts whether the request is granted or denied. If a timely request for an extension is submitted, the time for the petitioner and any notified district to file a written objection to the decision or supplemental decision of the Allocation Group is extended to 10 days after the mailing of the notice of whether the request is granted or denied. If the request is granted, the time for the petitioner and all notified districts to submit a written objection to the decision or supplemental decision of the Allocation Group is further extended to the 60th day after the date of mailing of the decision or supplemental decision.

(c) REVIEW BY APPEALS DIVISION.

(1) The petitioner or any notified district may appeal the supplemental decision of the Allocation Group by submitting a written objection to the Allocation Group within 30 days of the date of mailing of the Allocation Group's supplemental decision, or within a period of extension authorized by subdivision (b)(9)(10). Such an objection must state the basis for the objecting district's disagreement with the supplemental decision and include all additional information in its possession that supports its position.

(2) If a timely objection to its supplemental decision is submitted, the Allocation Group will, within 30 days of receipt of the objection, prepare the file and forward it to the Appeals Division. The petitioner, all notified districts, any other district that would be substantially affected if the petition were granted, and the Sales and Use Tax Department will thereafter be mailed notice of the appeals conference, which will generally be sent at least 45 days prior to the scheduled date of the conference.

(A) Petitioner or any notified district may continue to discuss the dispute with staff of the Sales and Use Tax Department after the dispute is referred to the Appeals Division. If, as a result of such discussions or otherwise, the Sales and Use Tax Department decides the supplemental decision of the Allocation Group was incorrect or that further investigation should be pursued, it shall so notify the Appeals Division, the petitioner, and all notified districts.

(B) If the Department sends notice to the Appeals Division in accordance with the subdivision (c)(2)(A) no later than 30 days prior to the date scheduled for the appeals conference, the Appeals Division will suspend its review and the dispute will be returned to the Department. The Department will thereafter issue a second supplemental decision, or will return the dispute to the Appeals Division along with a report of its further investigation, if appropriate, for the review and decision of the Appeals Division.

(C) If the Department sends notice to the Appeals Division in accordance with subdivision (c)(2)(A) less than 30 days prior to the date scheduled for the appeals conference, the Appeals Division will decide whether the dispute should be returned to the Department or remain with the Appeals Division, and notify the parties accordingly. If the dispute is returned to the Department, the Department will thereafter issue a second supplemental decision, or will return the dispute to the Appeals Division along with a report of its further investigation, if appropriate, for the review and decision of the Appeals Division.

(D) Where the Department issues a second supplemental decision in accordance with subdivision (c)(2)(B) or (c)(2)(C), it will send a copy of the decision to the petitioner, any notified district, and any other district that is substantially affected by the second supplemental decision, any of whom may appeal the second supplemental decision by submitting a written objection under subdivision (c)(1) within 30 days of the date of mailing of that supplemental decision, or within a period of extension authorized by subdivision (b)(9). If no such timely objection is submitted, the second supplemental decision is final as to the petitioner and all notified districts.

(3) The appeals conference is not an adversarial proceeding, but rather is an informal discussion where the petitioner, any notified districts who wish to participate, and the Sales and Use Tax Department have the opportunity to explain their respective positions regarding the relevant facts and law to the Appeals Division conference holder. To make the conference most productive, each participant should submit all facts, law, argument, and other information in support of its position to the Appeals Division conference holder, and to the other participants, at least 15 days before the date of the appeals conference; however, relevant facts and arguments will be accepted at any time at or before the appeals conference. If, during the appeals conference, a participant requests permission to submit additional written arguments and documentary evidence, the conference holder may grant that participant 30 days after the appeals conference, or 30 days with sufficient justification, to submit to the conference holder, with copies to all other participants, such additional arguments and evidence. Any other participant at the conference who is in opposition to the requesting participant on the issue(s) covered by the additional submission is allowed 45-30 days to submit to the conference holder, with copies to all other participants, arguments and evidence in response. No request by a participant for further time to submit additional arguments or evidence will be granted without the approval of the Assistant Chief Counsel of the Appeals Division or his or her designee. The Appeals Division on its own initiative may also request, at or after the appeals conference, further submissions from any participant.

The proposed amendments contained in this document may not be adopted. Any revisions that are adopted may differ from this text.

(4) Within 90 days after the final submission authorized by subdivision (c)(3), the Appeals Division will issue a written Decision and Recommendation (D&R) setting forth the applicable facts and law and the conclusions of the Appeals Division. The Chief Counsel may allow up to 90 additional days to prepare the D&R upon request of the Appeals Division. Both the request and the Chief Counsel's response granting or denying the request for additional time must be in writing and copies provided to the petitioner, all notified districts, and the Sales and Use Tax Department. A copy of the D&R will be mailed to the petitioner, to all notified districts, to any other district that will be substantially affected by the D&R, and to the Sales and Use Tax Department.

(5) The petitioner or any notified district may appeal the D&R by submitting a written request for Board hearing under subdivision (d)(1) within 60 days of the date of mailing of the D&R.

(6) The petitioner, any notified district, or the Sales and Use Tax Department may also appeal the D&R, or any Supplemental D&R (SD&R), by submitting a written request for reconsideration (RFR) to the Appeals Division before expiration of the time during which a timely request for Board hearing may be submitted, or if a Board hearing has been requested, prior to that hearing. If a district or the Sales and Use Tax Department submits an RFR before the time for requesting a Board hearing has expired, the Appeals Division will issue an SD&R to consider the request, after obtaining whatever additional information or arguments from the parties that it deems appropriate. If an RFR is submitted after a district has requested a Board hearing, the Appeals Division will determine whether it should issue an SD&R in response. A copy of the SD&R issued under this subdivision or under subdivision (c)(7) will be mailed to the petitioner, to all notified districts, to any other district that will be substantially affected by the SD&R, and to the Sales and Use Tax Department. The petitioner or any notified district may appeal the SD&R by submitting a written request for Board hearing under subdivision (d)(1) within 60 days of the date of mailing of the SD&R.

(7) Whether or not an RFR is submitted, at any time prior to the time the recommendation in the D&R or prior SD&R is acted on by the Department as a final matter or the Board has held an oral hearing on the petition, the Appeals Division may issue an SD&R as it deems necessary to augment, clarify, or correct the information, analysis, or conclusions contained in the D&R or any prior SD&R.

(8) If no RFR is submitted under subdivision (c)(6) or request for Board hearing under subdivision (d)(1) within 60 days of the date of mailing of the D&R or any SD&R, the D&R or SD&R as applicable is final as to the petitioner and all notified districts unless the Appeals Division issues an SD&R under subdivision (c)(7).

(d) REVIEW BY BOARD.

(1) The petitioner or any notified district may submit a written request for Board hearing if it does so to the Board Proceedings Division within 60 days of the date of mailing of the D&R or any SD&R. Such a request must state the basis for the district's disagreement with the D&R or SD&R as applicable and include all additional information in its possession that supports its position.

(2) If the Board Proceedings Division receives a timely request for hearing under subdivision (d)(1), it will notify the Sales and Use Tax Department, the petitioner, any notified district, any other district that would be substantially affected if the petition were granted, and the taxpayer(s) whose distribution (or nondistribution) are the subject of the petition, that the petition for redistribution of district tax is being scheduled for a Board hearing to determine the proper distribution.

(3) The Sales and Use Tax Department, the petitioner, and all districts notified of the Board hearing pursuant to subdivision (d)(2) are parties and may participate in the Board hearing. The taxpayer is not a party to the Board hearing unless it chooses to actively participate in the hearing process by either filing a brief or making a presentation at the hearing.

(4) Briefs may be submitted for the Board hearing in accordance with California Code of Regulations, title 18, sections 5270 and 5271.

(5) To the extent not inconsistent with this regulation, the hearing will be conducted in accordance with Chapter 5 of the Board of Equalization Rules for Tax Appeals (Cal. Code Regs., tit. 18, § 5510, et seq.). The Board will apply the preponderance of evidence rules set forth in subdivision (b)(2) in reaching its decision and not the burden of proof rules set forth in California Code of Regulations, title 18, section 5541. The Board's final decision on a petition for redistribution exhausts all administrative remedies on the matter for all districts.

(e) LIMITATION PERIOD FOR REDISTRIBUTIONS. For redistributions where the date of knowledge is prior to January 1, 2008, the standard three-year statute of limitations is applicable, based on the date of knowledge. For redistributions where the date of knowledge is on or after January 1, 2008, redistributions shall not include amounts originally distributed earlier than two quarterly periods prior to the quarter of the date of knowledge.

The proposed amendments contained in this document may not be adopted. Any revisions that are adopted may differ from this text.

(f) OPERATIVE DATE AND TRANSITION RULES.

This regulation is intended to reduce the time required to decide the validity of redistribution petitions and otherwise improve the process for doing so. ~~Regulation 1828 was repealed and readopted in 2008. It is~~ The readopted regulation is intended to have a neutral impact only on the current dispute over the continuing validity of certain petitions that ~~are were~~ governed by prior Regulation 1828 (effective June 17, 2004).

(1) The operative date of this regulation ~~as readopted in 2008 and any amendments thereto~~ is the effective date ~~it becomes effective~~ under Section 11343.4 of the Government Code (thirty days after ~~it has been approved~~ approval by the Office of Administrative Law and ~~forwarded~~ forwarding to the Secretary of State) and ~~it there~~ shall ~~have be~~ no retroactive effect.

(2) ~~Petitions filed prior to the operative date of this regulation,~~ Notwithstanding subdivision (f)(3), petitions shall be reviewed, appealed and decided in accordance with this regulation as to procedures occurring after ~~that~~ its operative date or that of any amendments thereto.

(3) All ~~such~~ petitions filed prior to July 1, 2004 and denied by Board Management must have perfected any access they may have had to a Board Member hearing no later than 60 days after the September 10, 2008 operative date of this regulation.

The proposed amendments contained in this document may not be adopted. Any revisions that are adopted may differ from this text.